UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 07-60399-CIV-ALTONAGA/TURNOFF

SPIRIT AIRLINES, INC.

Plaintiff,

vs.

24/7 REAL MEDIA, INC., et. al.

Defendants.

_______________________________________/

DEFENDANT ADVERTISING.COM, INC. AND AMERICA ONLINE, INC.'S UNOPPOSED MOTION FOR INDEFINITE ENLARGEMENT OF TIME TO RESPOND TO COMPLAINT FOR INTERPLEADER

Defendants Advertising.com, Inc. ("Advertising.com") and America Online, Inc. d/b/a AOL ("AOL") hereby move this Court for an indefinite enlargement of time, pending the Court's decision as to whether this case should proceed in this Court, in which to respond to the Complaint for Interpleader filed by Plaintiff Spirit Airlines, Inc. ("Spirit"). In support of this motion, Advertising.com and AOL state as follows:

1. Spirit's Complaint for Interpleader alleges that this Court has subject matter jurisdiction under both the Federal Interpleader Act ("FIA"), 28 U.S.C. § 1335, and Federal Rule of Civil Procedure 22 in concert with the diversity statute, *id.* § 1332.

2. On April 27, 2007, Advertising.com and AOL moved for a brief enlargement of time, through and including May 9, 2007, to serve their answers or motions addressed to the Complaint for Interpleader. DE-16-1. The Court granted the motion that same day. DE-21.

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3. On May 1, 2007, the Court ordered Spirit to submit a "Motion for Entry of Clerk's Default" no later than May 11, 2007, with respect to Defendants TravelZoo, Inc., Travel Marketing Group, Inc., Echo Target, Inc., Real Media, Inc., Cheapflights (USA), Inc., Hotwire, Inc., and Tripadvisor LLC, Inc. ("Order on Default Procedure"). DE-39. "To date," the Court explained, those Defendants "have failed to answer or otherwise respond" to the Complaint for Interpleader.

4. On May 3, 2007, the Court, *sua sponte*, issued an Order addressing the issues of subject matter jurisdiction and venue in this Court. DE-40. The Court determined that complete diversity is lacking in this matter and, therefore, Spirit may not proceed in this Court pursuant to Federal Rule of Civil Procedure 22. *Id.* at 2.

5. Because only statutory interpleader under the FIA is potentially available to Spirit, the Court explained that "deposit of the amount in controversy with the Court is a requirement for the exercise of jurisdiction." *Id.* (citing 28 U.S.C. § 1335(a)(2)). As the Court observed, Defendant Carrollton Bank has asserted that it is entitled to $660,697.73 from Spirit. Spirit, by contrast, claims that the amount in controversy -- that is, the amount Spirit alleges it owes all defendants -- is just $458,186.26. Complaint [DE-1] ¶ 59. Notably, that figure is less than the amount that Advertising.com and AOL, alone, maintain they are owed ($506,841.33). *See id.* ¶¶ 45 & 56. The amount in controversy is therefore highly disputed in this case.

6. The Court further observed that the venue statute for statutory interpleader actions, 28 U.S.C. § 1397, provides that venue is proper in judicial districts where one or more of the claimants reside. Therefore, the Court explained, "[i]t appears . . . that venue may not be proper in this Court." DE-40, at 3.

7. Accordingly, the Court ordered Spirit to submit a written filing addressing two separate issues: (1) whether Spirit is, in fact, obligated to make a deposit in the amount of $660,697.73 with the Court Registry, and whether Spirit is prepared to make such a deposit; and (2) whether venue is proper in this Court. *Id.*

8. The Court ordered Spirit to brief the foregoing issues by May 17, 2007. *Id.*

9. In light of the Court's concerns over subject-matter jurisdiction and venue, the Court set aside the Order on Default Procedure "pending a determination of whether this case should proceed in this Court." *Id.* The Court did not, however, address a related question: whether Advertising.com and AOL are still required to respond to the Complaint for Interpleader by May 9, 2007.

10. For the same reasons the Court aside its Order on Default Procedure, it should indefinitely continue the deadline for Advertising.com and AOL to respond to the Complaint for Interpleader. The Court has raised serious concerns as to whether jurisdiction and venue are proper in this Court, and has ordered Spirit to promptly address those concerns through written submissions. In the event the Court determines that jurisdiction is lacking or that venue is improper, this case must be dismissed.

11. Advertising.com and AOL therefore seek an indefinite enlargement of time to respond to the Complaint for Interpleader, pending the Court's determination of whether this case should proceed in this Court. Such an enlargement will serve the interests of judicial economy, in that it will potentially obviate the need for Advertising.com and Spirit to respond to the Complaint for Interpleader, and potentially relieve the Court of the burden of addressing motions to dismiss by Advertising.com and AOL.

12. Attorneys of record have communicated to the undersigned that Spirit has no objection to the enlargement of time requested herein.

13. This motion is brought in good faith and not for the purpose of delay, and no party will be harmed by granting the relief requested herein.

14. A proposed order granting this motion is attached.

WHEREFORE, Defendants Advertising.com, Inc. and America Online, Inc. respectfully move for an enlargement of time, pending the Court's determination as to whether this case should proceed in this Court, to serve their responses to the Complaint for Interpleader.

Dated: May 7, 2007
Miami, Florida

Respectfully submitted,

/s/ Samuel S. Heywood
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Attorneys for Defendants Advertising.com, Inc. and America Online, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2007, I electronically filed the foregoing document with the Clerk of the Court using Cmplnt./ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by Cmplnt./ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Samuel S. Heywood
Samuel S. Heywood

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SERVICE LIST

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